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AUTHOR McClure, Phyllis; Califa, Antonio
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ABSTRACT

The impact of the Supreme Court's 1984 Grove City College v. Bell decision on the interpretation of civil rights laws is discussed in this report. The Grove decision, it is argued, has made it possible for institutions to discriminate in programs which do not receive direct Federal aid. As a result, civil rights and affirmative action laws have become very difficult to enforce. First, the report outlines the following effects of the decision: (1) Federal audits or compliance reviews of institutions receiving tax dollars have been reduced or sharply limited; (2) civil rights agencies now investigate discrimination complaints only when Federal money is tied directly to the specific program or department of the institution in which the alleged discrimination took place; (3) compliance plans to end discrimination which were already in place before the Supreme Court ruling are now being revoked; (4) administration law judges are dismissing cases in which institutions refuse to voluntarily observe compliance plans to remedy violations that had been found before the Grove decision; and (5) Federal judges are throwing out private law suits where no Federal money is found in the program or activity where discrimination has been alleged. Next, the paper highlights court cases that involve four major civil rights laws that have been affected by the Grove decision. These laws are: Section 504 of the Rehabilitation Act of 1973 (affecting the disabled); Title VI of the Civil Rights Act of 1964 (concerning racial discrimination); the Age Discrimination Act of 1975; and Title IX of the Education Amendments of 1972. (KH)

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Justice Denied: The Loss of Civil Rights After the Grove City College Decision

A Report Compiled by
The NAACP Legal Defense and Educational Fund, Inc.
The American Civil Liberties Union

My belief has always been . . . that wherever in this land any individual's constitutional rights are being unjustly denied, it is the obligation of the Federal Government—at point of bayonet if necessary—to restore that individual's constitutional rights.

President Ronald Reagan, May 17, 1983

Twenty-two years after Congress passed the first in a series of major civil rights laws guaranteeing Americans fundamental protections against discrimination based on their race, sex, disability or age, a bayonet should not be necessary to secure basic justice for all citizens. Over the past two decades Congress, time and again, has restated its intent that any institution which receives federal funds must not engage in discrimination. Up until 1980 every President, both Republican and Democrat, stood squarely behind this principle. What, then, is the state of civil rights enforcement in 1986? The tragic answer is: piecemeal and arbitrary. Due to a 1984 Supreme Court decision, Americans can no longer feel assured that the schools, hospitals, airports, correction facilities and other institutions which they support through their federal taxes are required to treat them fairly.

When the Supreme Court handed down its *Grove City College v. Bell* decision on February 28, 1984 it, in effect, created a giant loophole through which institutions can now discriminate, even if they are receiving substantial contributions from the federal government. The Court ruled that since the student financial aid office was the only part of Grove City College which received direct federal funds it, alone, was subject to the anti-sex discrimination provisions of Title IX of the Education Amendments of 1972. Consequently, the rest of the college would be free to discriminate against women in any of its other programs and activities.

Shortly after the *Grove City College* decision, William Bradford Reynolds, the Assistant Attorney General for Civil Rights, declared that the Court's interpretation would be applied across-the-board to all four civil rights laws since they have the same "program or activity" language and share a

common legislative history. Since the other three statutes cover not only educational institutions but all organizations that receive federal funds, the impact of the ruling was extended to reach corporations, local governments, hospitals, airports, etc. The four laws are:

- **Title VI of the Civil Rights Act of 1964** which prohibits discrimination on the basis of race, color or national origin by recipients of federal financial assistance;
- **Title IX of the Education Amendments of 1972** which bans sex discrimination in educational institutions and programs that benefit from federal funds;
- **Section 504 of the Rehabilitation Act of 1973** which protects disabled people from discrimination by all recipients of federal dollars; and

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- **The Age Discrimination Act of 1975** which forbids discrimination on the basis of age by any agency or institution that receives federal aid.

As a result of the narrow, program-specific interpretation of the *Grove City College* decision, many activities of these institutions now are not covered. In other cases, the scope of our civil rights laws depends on trivial distinctions about which "program or activity" within an institution is receiving federal financial assistance—for example, whether a building on a university campus was constructed or renovated with federal money, whether a student is in a course of study or lab funded by the federal government, or even in what year the funds were received.

... the scope of our civil rights laws depends on trivial distinctions about which "program or activity" within an institution is receiving federal financial assistance—for example, whether a building on a university campus was constructed or renovated with federal money ...

The original intent of Congress—that tax dollars not be used to subsidize discrimination—has been subverted by the Supreme Court decision and the subsequent curtailment of civil rights enforcement by federal agencies and the courts. Since the *Grove City College* ruling, thousands of complaints charging discrimination already filed with the Department of Education, the Department of Health and Human Services and other federal agencies have been dismissed on the grounds that the agencies lack jurisdiction. This report will document a small sampling of these cases and show the extent to which civil rights for minorities, women, the disabled and the elderly, once thought to be secure, now have been trivialized.

Post-Grove City Obstacles to the Enforcement Process

Numerous roadblocks now stand in the way of effective civil rights enforcement. At each step in the previous process of enforcement, new and major barriers are interposed:

- **Audits:** Prior to the Supreme Court decision, the government initiated broad, systematic "audits" of institutions receiving federal dollars. Based on routine paperwork required of all recipients of federal aid, civil rights agencies targeted those colleges, hospitals, etc. that seemed most "suspect" of discriminatory practices. These "audits," known officially as compliance reviews, looked not only at the specific program or activity which received tax dollars but at policies and practices anywhere in the institution. Now, many of these reviews have been cancelled, while others are limited to a very narrow program.
- **Complaints:** When an individual files a complaint with a civil rights agency, it can only be investigated if federal money is

How the Enforcement Process Works

Agencies which disburse federal dollars, such as the Agriculture Department, the Department of Education and the Department of Health and Human Services, have established a process to enforce civil rights.

Investigations into possible cases of discrimination can be initiated in one of two ways—either through a complaint filed by a citizen, or by agency-initiated audits of certain recipients of federal funds. These are known as "compliance reviews." In most cases, a corrective action agreement or "plan" to remedy the violation is reached between the agency and the recipient institution. If an acceptable plan cannot be negotiated, cases may be taken to an Administrative Law Judge for a hearing. That hearing is the first step in a process which may lead to the termination of federal financial assistance if discrimination is proven. In especially egregious cases, agencies also have the option of referring matters to the Justice Department for the filing of a lawsuit.

tied directly to the specific office, program or department of a school, hospital, prison, etc. in which the alleged discrimination took place. The process of documenting a financial trail leading to a specific program is long and tedious, frequently taking months or even years. Complaint investigations sometimes have been put on "hold" while the enforcement agency tries to decide whether different kinds of federal assistance are connected to the alleged discrimination.

- **Compliance:** Compliance plans to end discrimination which were already in place before the Supreme Court ruling are now being revoked. For example, the Department of Education's Office for Civil Rights (OCR/ED) told four universities that it lacked authority to monitor plans the schools had already initiated to overcome sex-based discrimination in athletic programs.
- **Administrative Hearings:** Administrative law judges are dismissing cases in which institutions refuse to voluntarily observe compliance plans to remedy violations that had been found before the *Grove City College* decision.
- **Court Cases:** Federal judges are throwing out private law suits when no federal money is found in the "program or activity" where discrimination has been alleged.

In some of these cases, as this report demonstrates, discrimination by the recipient of tax dollars has been clearly documented. The loophole created by the Supreme Court, however, entitles them to go on receiving federal aid while continuing to discriminate. In other instances, it will never be known if a complainant suffered discrimination since he or she will never get a full and fair hearing.

Disabled Can No Longer Count On Strong Enforcement Of Their Rights

When Congress enacted Section 504 of the Rehabilitation Act of 1973, it intended to eliminate many of the barriers that prevent the disabled from participating fully in society. Congress determined that one effective vehicle for "mainstreaming" the disabled was to condition receipt of federal money on a requirement that recipients make an effort to reasonably accommodate the needs of the disabled. After a decade in which major advances have been made to integrate those with disabilities into American life, the 1984 Supreme Court ruling now threatens this progress. The cases below are a sample of the arbitrary ways in which the rights of the disabled are being determined:

- *When were the federal funds received?* Deaf persons were summoned to serve as jurors in the Los Angeles County Superior Court. When they asked whether they would be provided with sign-language interpreters, the answer was "no." One of the would-be jurors, Nathan Shapiro, showed up for jury duty with his own sign language interpreter and, after serving as a juror for twenty-two days, sent the bill for the interpreter's services to the court. When the Superior Court refused to pay the bill, Mr. Shapiro filed suit in federal court, claiming he was the victim of a Section 504 violation.

The following facts emerged. In the years just prior to Mr. Shapiro's jury service, the Los Angeles Superior Court received:

1. \$211,880 from the U.S. Department of Justice for the Jury Service Improvement Program;
2. \$410,052 from the Department of Health, Education and Welfare (predecessor of the Department of Health and Human Services) for a child protection program; and
3. Part of a large federal revenue sharing allotment to Los Angeles County for use in the Superior Court's employee retirement program.

Despite the sizeable outlay of federal tax dollars for the Superior Court, the judge ruled that he did not have jurisdiction under Section 504 because, in the year Mr. Shapiro served as a juror, the Los Angeles Superior Court had not received any federal funds. He cited the *Grove City College* case as a basis for his decision.

- *When traveling, what is the destination?* Neil Jacobson, a victim of cerebral palsy, found that the place to which he was flying was the key factor in determining the extent of his civil rights. When he attempted to buy a plane ticket for a trip from Birmingham, Alabama, to Los Angeles, California, Delta Air Lines refused to let him board the flight unless he signed a "medical release form." The form would allow the airline to refuse service or remove him at any point in the flight if it became necessary for the comfort and safety of other passengers. Mr. Jacobson sued in federal court, claiming that the airline was the recipient of three types of federal assistance and therefore was in violation of Section 504. Delta benefited from

the following forms of federal funding:

1. direct payments for carrying U.S. mail;
2. subsidies for serving small communities; and
3. indirect assistance through federal support for airport construction, provision of weather reports, air traffic controllers, etc.

Despite Delta's obvious benefit from a broad range of federal programs, Mr. Jacobson lost his case. Why? Since he was traveling between two large cities, there was no jurisdiction. If, on the other hand, he had been flying between two small communities, based on the special subsidy program to the airline, he might have had a successful case under the post-*Grove City College* narrow interpretation of Section 504.

- *Civil rights on the ground, but not in the air: the Paralyzed Veterans of America take their case to court.* Under current regulations, only the ground operations of large airlines are subject to Section 504 requirements. This means that ticket counters and baggage check-in and retrieval areas must be accessible to handicapped persons, but the airline could still refuse to sell them a ticket to fly.

The Paralyzed Veterans of America took their grievance to the District of Columbia Circuit Court which found the attempt to distinguish between ground operations and air transportation to be specious. The judges noted "the absurd result that handicapped persons are protected from discrimination in air transportation only up to the door of the aircraft—that is, so long as they are not being transported in the air."

Disagreeing with the Circuit Court, the Justice Department has appealed the case to the Supreme Court where the government's brief relies heavily on the *Grove City College* narrow interpretation of "program or activity." The Court has agreed to hear the case and a decision is expected before July, 1986.

Bias in the Employment Market

Section 504 of the Rehabilitation Act of 1973 is the only federal law that protects otherwise-qualified handicapped people from employment discrimination. Since the *Grove City College* decision, a disabled citizen's right to equal employment opportunity under Section 504 is, at best, erratic. As the examples below illustrate, the location of federal dollars is what counts—not the merits of the complaint.

- A blind man filed a complaint alleging that, due to his disability, he was denied a position as a parole/probation officer with the Michigan Department of Corrections. The Department received federal education grants for adult and vocational training. However, since the job in question was located in the Bureau of Field Services which did not specifically receive any of this money, the Office for Civil Rights in the Education Department (OCR/ED) closed the case without an

investigation. The blind man, who may or may not have been qualified for the position under Section 504, will never get a fair hearing.

- A deaf-mute woman sent a typed complaint to OCR/ED in which she explained that a job announcement for someone to type forms for the California Poets-In-The-Schools program was posted on the bulletin board of the Creative Writing Department at San Francisco State University. In her complaint she explained that she had written:

a well-typed letter detailing my experience and my enthusiasm for working with an agency that provides paying work for writing poets. I was happy to find that the California Poets-In-The-Schools . . . called in a message . . . When the reception clerk [at the disabled students' center] called back telling [the employer] that I am unable to speak, she listened . . . and then said . . . that a lot of . . . the school's business is conducted by phone, and that if I couldn't speak, I could not get the job.

The woman was not given the standard university form asking whether job seekers had been treated fairly in the interview process. Whether this job applicant was the victim of discrimination will never be known since an OCR/ED attorney determined that:

[B]ased on the information which we now have, the nature of the program in which the complainant was denied employment, its funding sources and ED funding

to the recipient institution, it is my opinion that under *Grove City*, we do not have jurisdiction to investigate this complaint. My opinion would be altered only if we were able to establish that the recipient's Humanities building in which the California Poets-In-The-Schools program maintains its office, was built with ED monies.

This woman's ability to get a hearing on whether her rights had been violated depended, in other words, on who paid to construct the building in which the office was located.

- A woman who worked as a medical records clerk for the Permanente Medical Group charged that she was dismissed from her job based on a disability. She filed a Section 504 complaint with the Office for Civil Rights of the Department of Health and Human Services (OCR/HHS). Counsel for the Kaiser Foundation Health Plan in Oakland, California, with which the Permanente Medical Group is affiliated, dodged compliance with the law through a technicality. The lawyer charged that while the Group receives federal Medicare payments, the Outpatient Medical Records department in which the woman was employed does not handle federal payments. Although this arbitrary distinction was enough to prevent OCR/HHS from investigating the complaint, the woman persevered and, thanks to a California law which provides greater protection against discrimination than post-*Grove City College* federal law, she was reinstated in her old job.

Title VI of the Civil Rights Act of 1964

Protections Against Racial Discrimination Weakened

Prior to the Civil Rights Act of 1964, racial segregation of schools, universities, hospitals and places of public accommodation prevailed by law in the South, and by custom in many other places. However, Title VI of that Act made segregation and different treatment on the basis of race illegal by any recipient of federal funding. For example, a hospital could no longer refuse to take black patients, deny black physicians staff privileges or segregate patients on the basis of race in its waiting room or wards if it received Medicare or Medicaid payments or construction grants. Whether or not the money went directly to the waiting room, wards or some other department was irrelevant.

Title VI was also a major vehicle for implementing the Supreme Court's 1954 landmark decision in *Brown v. Board of Education*. School systems which were racially segregated by state law or local policy faced the loss of federal funds unless they adopted adequate desegregation plans.

The *Grove City College* decision, however, now permits recalcitrant school officials to continue to engage in illegal conduct without fear of federal compliance enforcement under Title VI. As the two cases below illustrate, officials can

deliberately maintain segregated schools or classes while continuing to reap the benefits of federal assistance. They merely must claim that the federal dollars are not going directly to the "program or activity" in which the discrimination is taking place.

- Race-based pupil assignment plans have been a way of life in Fort Wayne (Indiana) Community Schools for decades. In 1984 the Office for Civil Rights of the Department of Education (OCR/ED) issued formal findings based on extensive evidence that the school system had maintained segregated schools through the construction, expansion and closing of facilities, manipulation of attendance boundaries and assignment of teachers. When Fort Wayne officials refused to comply voluntarily with Title VI, OCR/ED sent the case to an administrative law judge, the first enforcement stage leading to a cutoff of federal funds. The school system responded by filing suit in federal court against the Department, claiming that the discrimination does not occur in any federally-assisted programs and therefore funds should not be terminated. No final decision has been made in the case and, in the meantime, the segregated schools of Fort Wayne continue to spend federal tax dollars.

- In Mecklenburg County, Virginia, pupil assignments to classes based on "ability grouping" began immediately after a federal court ordered the county to desegregate its dual school systems. Black students at the elementary and junior high levels generally are assigned to the lowest groups based on test scores and such subjective factors as available space, teacher judgment and the so-called "best educational environment." In the elementary grades, this segregation extends even to music, art and physical education classes. The lowest groups cover less material than the middle or higher groups. So even if students at the lowest level demonstrate improvement in academic performance, they can rarely move up a level because they are unable to catch up with the more advanced classes. In effect, once in a low-level group, the student is "locked-in."

While racially-isolated classes, if based on *bona fide* ability grouping, are not necessarily forbidden under Title VI, this clearly is not the case in Mecklenburg County. Prior to 1984, OCR/ED found the county in violation of Title VI. Since then, however, bolstered by the *Grove City College* decision, the school district's lawyers have argued that because the ability grouping does not occur in a "program" receiving federal funds, the Department has no jurisdiction. The administrative law judge agreed, and dismissed the case.

Minorities are finding it increasingly difficult to even get a hearing when they believe they have been the victims of discrimination. For example, a black woman complained to OCR/ED that she had been dismissed from M.T.D. Business College in California and, based on her race, had not been treated fairly in the award of grades and the provision of make-up tests. Although the college received more than \$100,000 in student financial aid in the form of Pell grants, the agency could not investigate because the alleged discrimination did not occur in the financial aid program.

Compliance Reviews Cut Back

In the past, the Department's Office for Civil Rights has audited those schools and universities which, based on responses to routine forms, revealed possible compliance problems with

The Age Discrimination Act of 1975

Age Discrimination Cases Affected by *Grove City* Decision

The Age Discrimination Act of 1975 forbids discrimination, which is generally targeted at older people, in the delivery of services and benefits that receive federal funds. Although it provides exemptions where age is a relevant factor to the normal operation of a program, the law has opened up universities to older citizens who were previously denied admission and has guaranteed those over 65 that they will not be turned down in federally-funded health services, housing and

Trivial Pursuits

The Office for Civil Rights in the Department of Education has recently been asked by three of its Regional Offices whether it has jurisdiction to investigate very similar cases in which black students charged they had been suspended from school on the basis of race. Each of the three school districts received Chapter 2 block grant funds, as well as vocational education and special education money. With the block grant funds each district had purchased a computer for its library.

What is the "program" in these cases? Is the "program" just the library where the computer is located? Is the "program" the gifted and talented class which uses the computer? Or is it the whole school?

Due to the complexities of determining what constitutes a "program or activity" receiving federal funds, each of the three Regional Offices had a different view as to whether the Department had jurisdiction to initiate investigations under the above circumstances. As a result of the *Grove City College* decision, federal civil rights officials are now spending an enormous amount of time on this type of frivolous jurisdictional question.

Title VI. These audits, once begun, were generally broad and thorough—not limited to a specific department or activity. The *Grove City College* ruling has changed all this. As a result, there has been a sharp cutback of compliance reviews, as the two examples below indicate.

- A Title VI review of counseling and tutorial services at Washington University in St. Louis, Missouri, was cancelled on the grounds that the \$2,563,612 in federal student aid and college work-study money did not adequately justify OCR/ED jurisdiction over counseling and tutorial services.

- Anderson College in South Carolina received \$211,224 in student financial aid. Nevertheless, OCR/ED determined that it did not have authority to conduct a Title VI review of student services such as housing, counseling or tutorial services.

rehabilitation programs. Now, due to the Supreme Court's 1984 ruling, some of these advances are threatened.

Fewer complaints have been filed under the Age Discrimination Act than under any of the other three civil rights laws. Eleven years after the law was passed, many agencies still have not issued the formal standards, or regulations, for determining unequal treatment. Consequently, there are fewer examples of how the *Grove City College* decision has impeded enforcement

of the law. Below, however, are two typical cases:

- A student at the University of Vermont charged that her dismissal from the Master's English program violated the Age Discrimination Act. The professor who caused her dismissal had said that she was "too old" to get a degree. Despite federal money going to the University in the form of student financial aid money, this woman's complaint was never investigated. The Department of Education's Office for Civil Rights (OCR/ED) wrote back that "your dismissal from the Graduate English Program was not investigated because we found that the affected program was not funded by the Department of Education."

- A woman who had helped found the Center for the Study of Children's Literature at Simmons College in Boston was dismissed from her job, allegedly for budgetary reasons. She later learned that a younger and junior male faculty member was promoted to a position above the one she previously held. The woman complained to the Department of Education that she had been treated unfairly because of her age and sex. Although the college received more than \$2 million annually in federal funds, school officials argued that OCR/ED did not have jurisdiction because the building in which the Center was located was not built with federal money. The case was closed.

The Solution?

Quick Passage of the Civil Rights Restoration Act

Immediately following the *Grove City College* decision, there was a strong, broad-based commitment to pass legislation to overturn the Court's decision. The Civil Rights Restoration Act of 1985, S. 431/ H.R. 700, was introduced to do exactly what its title implies—to restore the principle that the entire institution receiving federal assistance must comply with the nondiscrimination requirements of federal law. No other part of the four civil rights laws would be changed.

Measure Now Faces Defeat Unless Citizens Act

Hopes for regaining strong civil rights enforcement

through passage of H.R. 700 have been stalled in the House of Representatives by abortion-related amendments. The National Catholic Conference and anti-choice organizations have supported these amendments, thereby holding up final action. Citizens should let their representatives and senators know that they want the Civil Rights Restoration Act passed as a "clean" bill, without these controversial amendments. Only enactment of this important piece of legislation can restore effective civil rights enforcement. Simple justice requires no less.

Title IX of the Education Amendments of 1972

Sex Discrimination in Educational Institutions

Title IX of the Education Amendments of 1972 prohibits sex discrimination by federally-assisted schools and colleges. It also covers educational programs conducted by other recipients of federal money, such as prisons. While it is perhaps most widely known for its impact in upgrading athletic programs for females at both the high school and college level, it also protects against sex-based discrimination by schools in such areas as scholarships, admissions, counseling, health and insurance benefits and employment.

Women's Athletic Programs Depend on Strong Enforcement of Title IX

One of the most important accomplishments of Title IX has been the expansion of athletic opportunities for women and girls. For example, in 1970-1971 there were only 300,000 girls

participating in interscholastic athletics at the high school level. By 1978-79, five years after Title IX was enacted, the number of female high school athletes had reached two million. College athletic scholarships for women were almost nonexistent when Title IX was passed. Today, there are more than 10,000 women receiving this type of aid. Title IX also has been widely credited as a major factor in the excellent showing of U.S. women at the 1984 Olympics.

In spite of the enormous progress since 1972, women's intercollegiate athletic programs continue to be treated as inferior to men's programs at many colleges and universities. The *Grove City College* decision is exacerbating this situation. Of the sixty-four cases that were immediate casualties of the Supreme Court's ruling, more than half were Department of Education investigations of college-level athletic programs.

Some investigations, including ones at the University of

Maryland, Pennsylvania State University and Auburn University in Alabama, had just been completed when the Court announced its decision. As a result, almost all findings of discrimination against women athletes were dropped. Only parity in athletic scholarships has managed to survive since they are part of a school's student financial aid program and therefore have a direct tie-in to federal funding.

Other investigations which had just begun at the University of Washington and Southern Idaho College, for example, were cancelled. In a particularly dramatic case, Office for Civil Rights officials had already boarded airplanes for Juneau on February 28, 1984, to investigate charges of sex discrimination in athletic programs at the University of Alaska. As word of the *Grove City College* decision spread, university officials contacted the Department of Education demanding that the investigation be dropped immediately. Their request was granted.

Auburn Case Typifies Dilemma

The Auburn University case is a classic example of the disparities women continue to face in college-level athletic programs. The women's gymnastic and softball teams use facilities with no spectator stands, while men's teams enjoy superior facilities. When women athletes are recruited, they have to pay their own costs to visit the campus, while their male counterparts are reimbursed for travel expenses. Men have greater access to coaches, travel by plane instead of bus, and receive higher *per diem* allowances than women. As in other cases, the only area in which women have received fair treatment in the post-*Grove City College* era relates to financial aid. The University agreed to equalize scholarships based on the proportion of men and women in athletic programs.

• When the Northeast Bradford School District in Rome, Pennsylvania, dropped girls' volleyball, some parents filed a complaint of sex discrimination. The Department of Education's Office for Civil Rights (OCR/ED) decided that Title IX had been violated because the district's action left girls with fewer athletic opportunities than boys, even when school officials offered to substitute cheerleading for volleyball. Soon after the *Grove City* decision, however, the Superintendent wrote to OCR/ED: "On the advice of our attorney, because of the Supreme Court decision in the *Grove City* case, we feel that we should maintain our position, especially since no federal funds are utilized in our sports program." This case has been on "policy hold" for a year-and-a-half while OCR/ED tries to decide if it has authority to enforce non-discrimination in the schools' sports program.

• OCR/ED told four universities that it lacked authority to monitor the institutions' efforts to correct sex discrimination in their athletic programs. Western Michigan University, the University of Minnesota, Ohio University, and Ball State University (Indiana) all previously had agreed to remedy Title IX violations and were in various stages of implementing their compliance plans. Because OCR/ED thought that no federal money was going directly to the athletic departments, the federal agency could no longer assure equal opportunity for women athletes in these universities, although they continued to receive millions of dollars in federal aid.

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How One Case Had Nationwide Impact

One case torpedoed by the *Grove City College* decision is having ripple effects all across the country. Before the Supreme Court ruling, the Department of Education's Office for Civil Rights (OCR/ED) found Pickens County (South Carolina) Public Schools in violation of Title IX of the Education Amendments of 1972 because of the practice of assigning some students to physical education classes solely on the basis of their sex. The school district refused to operate only co-ed classes.

The Pickens Superintendent of Schools testified that his district received \$2 million in various kinds of federal assistance, but none of that money was spent on physical education. OCR/ED had originally countered that one of the federal grants that Pickens County received was unearmarked Chapter 2 education block grant funds which provided federal assistance to all elementary and secondary education programs and to administer the school system. Therefore, the agency argued, it had authority over the whole school district.

By the time the case reached an appeals panel within the Department of Education, however, the Supreme Court's ruling had provided the tool to thwart enforcement. The panel said that under the *Grove City College* decision, the civil rights laws applied only to the specific program in which the money was spent. The Pickens County case was dismissed.

OCR/ED could have appealed this decision, but did not. Instead it notified all of its Regional Offices that every case in which Chapter 2 money previously had been the sole basis of jurisdiction should be reviewed to see if the alleged discrimination occurred precisely where the block grant money had been spent. Almost every school district in the country receives Chapter 2 money. In some districts, it is the only money received from the federal government. Now it is legal for school systems to spend federal money in one program and to discriminate in another program, all within the same school.

Women athletes have not fared any better in court, as the two cases below indicate:

- A suit against West Texas State University was dismissed on the grounds that the athletic program did not receive federal money. The court rejected arguments that federal revenue sharing money, college work-study funds and a federal grant for construction of two dormitories and a cafeteria which the athletes used were sufficient to provide Title IX jurisdiction.

- A federal court ruled that the only part of Temple University's athletic department which is subject to Title IX requirements is its athletic scholarships since they are part of the student financial aid program.

Employment Discrimination

Educational institutions are forbidden under Title IX to engage in sex-based discrimination against employees, as well as against students. Below are two cases in which the *Grove City College* ruling has diminished the rights of these workers.

- Patricia Mabry taught courses in speech, health and physical education in the Department of Physical Education at Trinidad Community College in Colorado. When she was fired, Ms. Mabry filed suit in federal court charging that she had been illegally dismissed based on her sex. The merits of her case were never investigated. College attorneys, basing their position on the *Grove City College* decision, argued that none of the federal money was specifically designated for the Physical Education Department or used to pay the salaries of the Department's faculty. Even though Ms. Mabry argued that physical education and other classes she taught were part of the core requirements for a degree in programs that did receive federal financial assistance, the case was dismissed.

- Frances Zangrillo was a professor at the Fashion Institute of Technology in New York City which received almost a quarter of a million dollars in federal funds in 1983 and 1984. When she was denied seniority rights while on maternity leave, Ms. Zangrillo took two steps: she filed a Title IX complaint with the federal government and brought suit in federal court. Her case, it turned out, hinged not on whether she had indeed suffered discrimination, but on the definition of the program in which she was employed. Despite the large federal contribution to the Fashion Institute of Technology, both the administrative complaint and the lawsuit were dismissed because the funds could not be tied directly to the curriculum area in which she taught.

College Health Insurance Plans Biased Against Women

Prior to the *Grove City College* decision, any educational institution which offered a health insurance plan covering temporary disabilities was required under Title IX to provide comparable benefits for pregnancy-related conditions. Now, women are no longer guaranteed fair insurance coverage. Already, more than 500 complaints have come into the Office for Civil Rights of the Department of Education (OCR, ED), charging that pregnancy is being excluded from college health plans. The agency, however, is unable to take action unless two very specific criteria are met:

1. The university directly administers, operates or participates in the insurance plan; and
2. The insurance plan is part of a program or activity that receives federal funds.

Below are two hypothetical examples: one in which a woman is guaranteed full coverage and the other in which, due to arbitrary circumstances, she is left without pregnancy-related benefits.

- College A offers an optional health plan administered by the school. The vice president, purchasing agent and college nurse review the bids and plans submitted by the insurance companies and approve a specific plan. The nurse, whose office is located in a building that was constructed with a federal grant, distributes the brochures to incoming students. In this case, federal money is tied closely enough to the health insurance plan to permit an investigation by OCR, ED.
- In College B, on the other hand, the nurse distributes brochures about various optional health insurance plans available to students, but not administered by the school. Her office is in a building that was not constructed with federal aid. Here, OCR, ED has no authority to investigate complaints of discrimination under Title IX.

These are just two of many routes by which a university might offer health insurance to its students. Due to the Supreme Court ruling, federal civil rights enforcement agencies must conduct detailed and time-consuming inquiries into the precise operations of a university's health insurance plan and the location of all federal money that the school has ever received in the past in order to determine whether a civil rights violation has occurred. The result is a hodge-podge—Title IX applies to insurance coverage at one college but not at another. Just by rearranging administration of the insurance plan, colleges can escape compliance with federal law.

This report was prepared by:

Phyllis McClure
NAACP Legal Defense and Educational Fund, Inc.
806 15th Street, N.W.
Washington, D.C. 20005
202/638-3278

Antonio Califa
American Civil Liberties Union/ Washington Office
122 Maryland Avenue, N.E.
Washington, D.C. 20002
202/544-1681

Edited by Sally Berman, ACLU Washington Office.

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